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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,668	08/31/2001	Mehran Bashiri	S63.2-9867	3795
490	7590	02/06/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			BAXTER, JESSICA R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,668

Applicant(s)

BASHIRI ET AL.

Examiner

Jessica R. Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 5, 16-29, 31, 32 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15, 30, 33-42, 44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 January 2006 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 6-10, 14, 15, 38, 41, 42, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/41649 to Kocur et al.

Kocur discloses a stent having a longitudinal axis comprising: a non-woven tubular element having a plurality of openings therein the tubular element comprising a plurality of interconnected struts which form at least one continuous pathway which extends all the way around the longitudinal axis, the stent further comprising at least one struts being a frangible temporary strut (FIGS. 13a-13d segment 115, page 9, lines 15-21) which is made of a

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different material (Page 9 line 22-Page 11 15) from that of the stent, the frangible member restraining at least two interconnected members from self- expansion, at least a portion of the stent constructed and arranged to self-expand upon breaking of the at least one frangible restraining member (Page 2 lines 16-24). Kocur discloses that the interconnected members have an outside surface facing outside the stent, an inner surface facing the longitudinal axis and a side portion, the frangible member attached to only the side portion of the two interconnected members (Page 9 lines 15-17).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 30, 33, 34 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocur '649 in view of U.S. Patent No. 5,843,158 to Lenker et al.

Kocur discloses the claimed invention except for the restraining member being made of metal. Lenker teaches that frangible restraining members may be formed from metals or polymers to reinforce and support the frame of the prosthesis (Column 9 lines 25-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kocur with the material of Lenker as an alternate material to strengthen and support the prostheses.

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6. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of U.S. Patent No. 5,591,223 to Lock et al.

Kocur discloses that the frangible restraining members will break at a predetermined applied force (Page 2 lines 16-24). Kocur discloses the claimed invention except for the specific pressures at which the frangible restraining members break. Lock teaches that frangible members can withstand up to 10 atms before breaking and allowing the stent to expand (Column 5 lines 8-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kocur with the specific application pressures of Lock in order to restrain the device until it is placed in the body and in position to expand.

7. Claims 35, 36, 37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/41649 to Kocur in view of Lenker et al. '158 as applied to claim 30 above, and further in view of Lock et al. '223.

Kocur, as modified, discloses that the frangible restraining members will break at a predetermined applied force (Page 2 lines 16-24). Kocur, as modified, discloses the claimed invention except for the specific pressures at which the frangible restraining members break. Lock teaches that frangible members can withstand up to 10 atms before breaking and allowing the stent to expand (Column 5 lines 8-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kocur, as modified, with the specific application pressures of Lock in order to restrain the device until it is placed in the body and in position to expand.

Response to Arguments

8. Applicant's arguments filed 23 January 2006 have been fully considered but they are not persuasive.

Applicant argues that the frangible members of Kocur can not be viewed as struts. However, Kocur discloses that the retaining segments may be disposed between struts (Page 9, lines 15-21). These segments will act as struts until the members are severed by an application of force by a balloon catheter. These members act as struts since they provide a structural element used in the framework of the stent. Although, Kocur does not call these member s struts, they still may act as struts. The elements (115) provide structural support to the stent framework until an application of force is applied that causes them to break. Therefore, the rejection over Kocur is still deemed proper.

In response to applicant's argument that Lenker et al. '158 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Lenker discloses a stent that teaches a controlled expansion. This is both the same field as applicant's endeavor and is reasonably pertinent to the particular problem with which the applicant was concerned.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter
Examiner
Art Unit 3733


jrb


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER